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NO. 88-377

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1988

ALCAN ALUMINIO DO BRASIL, S.A.,

Petitioner,

vs.

LUCRECIA HERNANDEZ,

Respondent.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

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NO. 88-397

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1988

ALCAN ALUMINIO DO BRASIL, S.A.,

Petitioner,

vs.

LUCRECIA HERNANDEZ,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

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QUESTIONS PRESENTED

1) Can the Supreme Court's jurisdiction be invoked under 28 U.S.C. Section 1254 through a petition of certiorari arising from a state court order dismissing a petition for review where the state court could not exercise jurisdiction and thus, never reached the issues under which Petitioner brings its constitutional challenge?

2) Where a foreign corporation being sued for damages in federal court in Florida moved to dismiss for lack of personal jurisdiction and the court denied the motion and on remand to the Florida state court, the foreign corporation moved for summary judgment on precisely the same issue, did the state court have jurisdiction to rehear the issue?

3) Does the Florida Long Arm Statute in accordance with the Due Process Clause of the Constitution of the United States afford personal jurisdiction over a foreign corporation which manufactures a finished product and places the finished product into the stream of commerce and it is reasonably expected to reach Florida?

JURISDICTION

The Supreme Court has no jurisdiction in this case. The Petitioner cites 28 U.S.C. Section 1254 as the section which invokes the Supreme Court's jurisdiction. However, 28 U.S.C. Section 1254 determines how this Court acquires jurisdiction over cases from the federal courts of appeals. This petition arises out of an order rendered by the Florida Supreme Court, not a federal court of appeals. The appropriate section which determines Supreme Court jurisdiction over a case arising out of state court actions is 28 U.S.C. Section 1257. Nevertheless, section 1257 does not confer jurisdiction upon this Court over the matter at bar. The Florida Supreme Court never entered a final judgment or decree dealing with any matter within the purview of 28 U.S.C. Section 1257(3) the only statutory provision that could provide the basis for this Court's exercise of jurisdiction of the instant matter. (See Appendix C). Therefore, the Petitioner has inappropriately petitioned the Court to hear its constitutional argument. Petitioner has made a gross error in his attempt to invoke Supreme Court jurisdiction. Clearly, his petition should be denied.

STATEMENT OF THE CASE AND FACTS

Petitioner, ALCAN ALUMINIO DO BRASIL, S.A. (ALCAN BRASIL), manufactured the Rochedo pressure cooker in finished form in Brazil. ALCAN BRASIL has no office in Florida, nor is it registered to do business in Florida. However, Manuel Diaz of 1402 Northwest 82nd Avenue, is the wholesaler/distributor of ALCAN BRASIL's products in Florida. He is the sales representative of ALCAN BRASIL (A.6), and has been their representative in Miami since 1973 (A.28). The export manager for ALCAN BRASIL made his first trip to Florida in 1974 and continuously makes trips to Florida, usually two (2) to three (3) times per year to deal with Mr. Diaz (A.22-23). Mr. Diaz received sales commissions from ALCAN BRASIL for his sales of their products in Florida (A.7 and 35). ALCAN BRASIL ships its pressure cookers to Mr. Diaz in Miami (A.9). ALCAN BRASIL also ships directly to Mr. Diaz's customers in America, if so directed (A.10). It was through the efforts of, among other Latin-American manufacturers, ALCAN BRASIL, that Mr. Diaz's company, Group Brasil, Inc., was started in Miami, Florida.

On or about February 22, 1981, while properly using one of the Petitioner's pressure cookers, the Respondent was severely injured when, due to a defect in the pressure cooker, it violently exploded. This pressure cooker was among an abundance of defective pressure cookers manufactured by ALCAN BRASIL that had reached Florida. In January, 1984, ALCAN BRASIL, recalled all Rochedo pressure cookers manufactured between the years 1977 and 1982. To conduct this recall in Florida, advertising of the recall was placed in Miami papers directing customers who have the defective pressure cookers to exchange them for new models, through Group Brasil, Inc., located at 1402 Northwest 82nd Avenue, Miami; Manuel Diaz's company (A.26).

This action was brought in state court in Dade County, Florida. It was then removed to federal court pursuant to diversity jurisdiction. ALCAN BRASIL moved for dismissal for lack of personal jurisdiction; that motion was denied on January

23, 1986. ALCAN BRASIL never moved for rehearing of the jurisdictional issue. The case was remanded to state court after Respondent stipulated that the amount in controversy was under TEN THOUSAND DOLLARS ($10,000.00). (Appendix B.1-2). The Petitioner, ALCAN BRASIL, filed what was denominated as a "Renewed Motion for Summary Judgment in the Florida state court after remand."

There never was a Motion for Summary Judgment; the Petitioner was procedurally seeking relief from judgment pursuant to Florida Rule of Civil Procedure 1.540, but had failed to make even the slightest attempt to allege a single fact to support such relief. Further, that relief was no longer available to the Petitioner due to its failure to timely move within one (1) year.

On July 7, 1987, the trial court entered an order denying Petitioner's Motion for Summary Judgment.

The Third District Court of Appeals of Florida affirmed the trial court's decision and subsequently denied Petitioner's request for reconsideration. After Petitioner requested that the Florida Supreme Court invoke discretionary review of the case, that court dismissed the petition for discretionary review as it was without jurisdiction to hear the matter. It is from that order that this petition arises.

SUMMARY OF ARGUMENT

The petition for a writ of certiorari is without merit in this case. There are no unresolved issues of public importance regarding either the procedural or substantive merits of this case. The Florida courts' orders regarding those issues follow controlling case and statutory law, as well as comport with constitutional due process requirements.

The Petitioner's Renewed Motion for Summary Judgment was procedurally incorrect in that there had been no original Motion for Summary Judgment. The state court was without jurisdiction to hear Petitioner's motion since the issue had been resolved by the federal court on Petitioner's Motion to Dismiss for Lack of Personal Jurisdiction. The Petitioner was attempting to seek relief from judgment pursuant to Fla.R.Civ.P. 1.540. However, the Petitioner failed to make any showing of grounds for such relief.

Beyond the foregoing procedural defects in Petitioner's motion in the state trial court, Petitioner's position is completely void of substantive merit. The facts set forth in the deposition of Manuel Sosa Diaz (A.1-68), as presented to the trial court, clearly indicate that the courts of Florida have personal jurisdiction over the Petitioner.

Finally, Petitioner's charges that the Florida courts have acted improperly are devoid of any truth or merit and are nothing more than empty, self-serving statements, to provide food for Petitioner's counsel to feed his ego. In fact, one of the cases upon which Petitioner relies to support its argument is a recent Florida appellate decision which the Florida Supreme Court denied rehearing on.

ARGUMENT

I. WHERE A FOREIGN CORPORATION BEING SUED FOR DAMAGES IN FEDERAL COURT IN FLORIDA MOVED TO DISMISS FOR LACK OF PERSONAL JURISDICTION AND THE COURT DENIED THE MOTION AND ON REMAND TO FLORIDA STATE COURT, THE FOREIGN CORPORATION MOVED FOR SUMMARY JUDGMENT BASED ON PRECISELY THE SAME ISSUE, THE STATE COURT DID NOT HAVE JURISDICTION TO REHEAR THE ISSUE.

DISCUSSION

The Florida state court did not have jurisdiction to hear ALCAN BRASIL's "Renewed Motion for Summary Judgment." The proper procedural avenues which ALCAN BRASIL could have taken were to either move for rehearing pursuant to Fed.R.Civ.P. 60 or to appeal the denial of the Motion to Dismiss for Lack of Personal Jurisdiction. Under Title 28, Section 1292(b) U.S.C., the district judge had the power to indicate in his order that the denial of ALCAN BRASIL's motion was a controlling question of law that could have materially advanced the ultimate termination of the litigation. This would have afforded ALCAN BRASIL an immediate right of appeal of the nonfinal interlocutory order. ALCAN BRASIL failed to avail themselves of this right. ALCAN BRASIL will still be able to appeal the denial of its Motion to Dismiss for Lack of Personal Jurisdiction after final judgment. Fla.R.App/P. 9.130(g) states: "This rule shall not preclude initial review of a nonfinal order on appeal from the final order in the cause."

What ALCAN BRASIL was attempting to do was have the same issue that was decided by a court of competent jurisdiction, and is thus, res judicata, heard again by the state trial court in the form of a Summary Judgment. The trial court had no jurisdiction to hear the Motion for Summary Judgment after the issue was already settled in the same case. See, Allstate Finance Corporation v. Zimmerman, 296 F.2d 797 (5th Circuit 1961). The denial of ALCAN BRASIL's motion was made while the case was in good standing in federal court. Upon remand all decisions until the point of remand are valid upon the state court. See, Hill v. United States Fidelity and Guaranty Company, 428 F.2d 112 (1970).

What ALCAN BRASIL was actually doing was moving for relief from judgment under Fla.R.Civ.P. 1.540. However, ALCAN BRASIL fatally slept on this option for hearing. Rule 1.540 states: "The motion shall be made within a reasonable time, and for reasons one, two, or three not more than a year after the judgment, decree or other proceeding was entered or taken." The order denying ALCAN BRASIL's Motion to Dismiss was entered a year and a half prior to the motion subject of this appeal. Further, and perhaps more compelling, is that ALCAN BRASIL failed to assert the slightest basis for such relief. It cited a recent case in its motion. Not only is the case inapplicable (discussion of Issue II, infra), but new law, even if applicable, is not a grounds for relief under Rule 1.540.

The trial court was without jurisdiction to hear ALCAN BRASIL's "Renewed Motion for Summary Judgment." Other than ALCAN BRASIL's right of appeal from final judgment, ALCAN BRASIL is foreclosed from any hearing on the jurisdictional issue raised.

ARGUMENT

II. THERE ARE NO UNRESOLVED SUBSTANTIVE ISSUES OF PUBLIC IMPORTANCE IN THIS CASE, AND THE FLORIDA COURTS' RULINGS IN THIS MATTER HAVE BEEN CONSISTENT WITH CONTROLLING CASE AND STATUTORY LAW, AS WELL AS CONSTITUTIONAL DUE PROCESS REQUIREMENTS. WHERE A FOREIGN CORPORATION MANUFACTURES A FINISHED PRODUCT AND PLACES THE FINISHED PRODUCT INTO THE STREAM OF COMMERCE AND IT IS REASONABLY EXPECTED TO REACH FLORIDA, THE FLORIDA LONG ARM STATUTE AFFORDS PERSONAL JURISDICTION OVER THAT FOREIGN CORPORATION.

In order to maintain personal jurisdiction over a foreign corporation, due process requires that the foreign corporation have certain minimum contacts with the state, such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. International Shoe Company v. Washington, 326 U.S. 310 (1945). The recent case of Burger King v. Rudzewicz, 105 S.Ct. 2174 (1985), clarified the minimum contact requirement by stating that when a party reaches out and creates continuing obligations with the state, he would reasonably foresee being brought into court. ALCAN BRASIL sold the pressure cookers to its representative in Florida and directly shipped to Group Brasil, Inc. (a Florida corporation), and to Group Brasil's customers in both Florida and throughout America. ALCAN BRASIL knew that these goods would be used in Florida. ALCAN BRASIL sent an export manager to the United States two (2) to three (3) times a year to check on the sales efforts of the representatives of ALCAN BRASIL. Additionally, ALCAN BRASIL instituted a recall in Florida and conducted this recall of the same model pressure cookers subject of this action that reached Florida in the expected stream of commerce. Although the recall, in and of itself, may not be determinative of minimum contacts, combined with the foregoing facts, it is beyond question that ALCAN BRASIL had sufficient ties with Florida. Judge Scott, presiding in the federal court case prior to remand, denied ALCAN BRASIL's Motion to Dismiss for Lack of Personal Jurisdiction and noted these same findings.

Florida's long arm statute, Section 48.193(1)(f)(2) Fla. Stat. (1985) states:

> (1) any person, whether or not a citizen or resident of this state, who personally or through an agent, does any of the acts enumerated in this subsection, thereby submits himself and, if he a natural person, his personal representative to the jurisdiction of the courts of this state for any cause of action arising from the doing of any of the following acts. (f) causing injury to persons or property within this state arising out of an act or omission by the Defendant outside this state, if, at or about the time of the injury, either; (2) products, materials, or things processed, serviced, or manufactured by the Defendant anywhere or used or consumed within this state in the ordinary course of commerce, trade or use.

Clearly, ALCAN BRASIL comes under Florida's long arm jurisdiction.

Since the injury in Florida was caused by a product manufactured in Brazil, the relevant question is whether the product reached Florida under circumstances comporting with the requirement of Section 48.181(c) Florida Statute (1985), which states:

> Any person, firm or corporation which sells, consigns, or leases by any means whatsoever tangible or intangible personal property, through brokers, jobbers, wholesalers, or distributors to any person, firm or corporation in this state is conclusively presumed to be both engaged in substantial and not isolated activities within this state and operating, conducting, engaging in, or carrying on a business or business venture in this state.

The foreign corporation must exercise some control over either the personal property or the broker, jobber, wholesaler, or distributor in the state. Law Offices of Evan I. Fetterman v. Inter-tel, Inc., 480 So.2d 1382 (Fla. 4th DCA 1985); American Baseball Cap, Inc. v. Duzinsky, 359 So.2d 483 (Fla. 1st DCA 1978. ALCAN BRASIL exercised the requisite control over its representative Diaz and Group Brasil, Inc. by its initiative to create the company, by shipping its products to Group Brasil, Inc. in Miami, shipping directly to Group Brasil's customers throughout the United States; fixing and paying commissions to Diaz for his sales of ALCAN BRASIL products in the United States; and by its continuous and deliberate contact with Florida over more than a decade through its export manager's bi- or tri-yearly

sales visits.

ALCAN BRASIL relies upon Asahi Metal Industry Company, Limited v. Superior Court of California, Solano County, __US__, 107 S.Ct. 1026, __L.Ed.__2d__, 55 USLW 4197, (1987); Humble v. Toyota Motor Company, LTD. 727 F.2d 709 (1984); Maschinenfabrik Seydleman v. Altman, 468 So.2d 286 (Fla. 2d DCA 1985), as its grounds for the state court's lack of personal jurisdiction. ALCAN BRASIL claims that the facts of each of these cases are on all fours with the case at bar. In actuality, these cases teeter on a single claw at best. In Asahi Metal, assemblies for a tire were manufactured in Taiwan by Asahi, and were then shipped to the Japanese tire manufacturer who produced the finished product. Eventually, the tire, which contained the assemblies made by Asahi were shipped to the United States by the Japanese tire manufacturer as a finished product. The Court ruled that there was no personal jurisdiction over Asahi who only manufactured a part of a product and that the part was not shipped nor expected to reach in its part only form (emphasis added), anywhere other than Japan. Similarly, Humble manufactured car seats for Toyota. The seats were manufactured outside of the United States and delivered to Japan for Toyota to put in its cars. Toyota then shipped the cars to the United States; the finished product contained the part manufactured by Humble. The facts of these cases are not similar to those at bar. ALCAN BRASIL manufactured and shipped the finished product; not a small part of a larger machine. The finished product was shipped directly into Florida by ALCAN BRASIL.

ALCAN BRASIL also relied upon Seydleman. In Seydleman, products were sold to a third party and Seydleman had no control after the sale of the products. Seydleman had no agent, salesman, or distributors in Florida. Seydleman had no knowledge as to the final destination of the products. There was no reasonable expectation of being brought into court in Florida. This is clearly not the facts of this case. As the present facts indicate, ALCAN BRASIL ships directly to the United States, not

to another company which subsequently and unknown to ALCAN BRASIL, brought the product into Florida. The case before this court is consistent with Burger King, International Shoe, and all attendant authorities. Further Seydleman was considered and rejected by the federal court in its denial of ALCAN BRASIL's Motion to Dismiss for Lack of Personal Jurisdiction prior to remand.

ARGUMENT

III. Petitioner's CHARGES OF THE FLORIDA COURTS' IMPROPRIETY ARE DEVOID OF MERIT OR TRUTH.

Petitioner's charges asserted by its counsel are the ravings of a man who appears obsessed with seeing his name on the pages of the Supreme Court Reporter. Petitioner has already spent probably in excess of ONE HUNDRED THOUSAND DOLLARS ($100,000.00) on a case which contained no novel issues and where the Plaintiff sought damages that did not exceed NINE THOUSAND NINE HUNDRED AND NINETY-NINE DOLLARS ($9,999.00). (See Appendix B). However, Petitioner now claims that the Florida appellate court's denial of pro hac vice status for its house counsel, Mr. Salibra, created such an extreme financial burden that the Petitioner was forced to waive oral argument and thus prejudiced. Clearly, the Petitioner is reaching for any argument, no matter how frivolous, to gain access to the highest court of the land.

Additionally, one of the cases upon which Petitioner most heavily relies to support its position is Maschinenfabrik Seydelmann v. Altman, 468 So.2d 286, (Fla. 2d D.C.A. 1985) which is, of course, a Florida appellate court case.

CONCLUSION

Based on the foregoing facts and authorities, the state court has properly decided the issues in this case. Thus, the petition for certiorari is completely void of substantive merit. Moreover, the Supreme Court's jurisdiction cannot be properly invoked in this matter under 28 U.S.C. Section 1254 or any other statute.

Respectfully submitted,

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By: MARC L. GOLDMAN, ESQ.

(5464BRIE)

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APPENDIX A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CIVIL DIVISION

NO. 85-2729 CIV-Scvott

LUCRECIA HERNANDEZ,

Plaintiff,

vs.

ALCAN ALUMINIO DO BRASIL, S.A.

Defendant.

Third Floor,
757 Northwest 27th Avenue,
Miami, Florida 33125,
May 20, 1986,
1:00 p.m.

DEPOSITION OF MANUEL SOSA DIAZ

taken before Sandra Lish, Notary Public in and for the State of Florida at Large, pursuant to Re-Notice of Taking Deposition filed in the above cause.

- - - - -

APPEARANCES:

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(By: MR. MARC L. GOLDMAN),
Third Floor,
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Miami, Florida 33125,
on behalf of the Plaintiff.

PAPY, POOLE, WEISSENDORF & PAPY,
(By: MR. STEPHEN A. PAPY),
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201 Alhambra Circle,
Coral Gables, Florida 33134,
on behalf of the Defendant.

- - - - -

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
MANUEL SOSA DIAZ	3	43	50, 66	59, 67

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THEREUPON:

MANUEL SOSA DIAZ

having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GOLDMAN:

Q. Would you please state your full name and address for the record, sir?

A. Manuel Alberto Diaz Sosa, S-o-s-a. And my address is 12442 Southwest 26th Street. That's Coral Way, but it's 26th Street.

Q. Is that your home address, Mr. Sosa?

A. Mr. Diaz.

Q. It's Diaz?

A. Diaz.

Q. I guess we will clear that up, too.

A. Diaz Sosa. Sosa is my mother's last name. Diaz is my father's last name. I use both always, as a habit, in Cuba.

Q. Is that your home address, Mr. Diaz?

A. Yes, sir.

Q. Are you currently employed, Mr. Diaz?

A. Self-employed.

Q. Yes, what do you do?

A. I represent, I am the sales representative of

several manufacturers.

Q. Can you name them, please?

A. From the United States, I represent Pioneer Plastics. They make plastic laminates, like Formica, for instance. Our brand is Pionite.

From Brazil, I represent Alcan Aluminio Do Brasil. They manufacture aluminum kitchenware.

Q. Where is your business?

A. I haven't finished.

Q. Oh, I'm sorry.

A. Alcan Aluminium.

The other one is, I will have to spell that for you, M-e-l-h-o-r-a-m-e-n-t-o-s.

The other one is K-l-i-n-m-e-k.

The other one is T-e-r-m-o-l-a-r.

The other one is P-i-c-h-l.

The other one is M-e-i-s-t-e-r.

There are some reps that have 20 manufacturers. Meister. And there are two more to come, still not confirmed.

I work on a freelance, on a commission basis.

Q. Where do you run your business from? What's the address you run your business from?

A. From my home address. I mean, I have an office now.

Q. Yes, sir. What's your office address?

A. 7875 Northwest 12th Street, Suite 110.

Q. Could we have the phone number there, please?

A. Yes, 593-2262.

Q. Have you ever been associated with a company known as Group Brazil, Inc.?

A. I am the president of Group Brazil.

Q. What does Group Brazil do?

A. It's a warehouse. We began with that project on July 1, 1993. That was the first one we moved in.

The project was not related with Rochedo recall.

The idea was to join a group of different Brazilian manufacturers to put some stock here in Miami, in order that the sales representatives of these manufacturers, that were interested in making a breakthrough in the States, could have two options, when they would visit their customers, not myself only, but 20 other sales representatives.

The two options were, they go to a prospect buyer. You went to bring directly a full container of merchandise from Brazil to the States, they wrote the order, and sent it to the manufacturer.

You're not sure that the merchandise would sell well. Okay? You have your second option. You

make a trial with a small trial order that was shipped from the Miami warehouse to their warehouses.

In other words, Brazil was to service the manufacturers and help them to make a breakthrough in the States.

Q. Let me ask you this: When you say the manufacturers' sales representatives--

A. Yes.

Q. --is that what you do?

A. I am a sales representative, but the manufacturers that I represent as a salesman, they also have another sales representative in the United States.

Q. Okay. I am trying to understand exactly how these transactions work.

Do you, as a sales representative, make purchases from the manufacturers' representatives here?

A. No, no. Let me explain.

Q. Please.

A. Let's say that you're a wholesaler here in the United States.

Q. Okay.

A. And that I am the sales representative in that territory for Alcan, or for any other manufacturer.

I go to your office, I quote the prices and

the terms that the manufacturer determines, and I quote you the prices, I show the samples, if I have, for the catalogs, and you make the decision to buy or not to buy to the manufacturer.

So, I write the order. I send it to the manufacturer. And, then, when he receives the order, the manufacturer ships you directly.

You pay directly to the manufacturer through a bank, or whatever terms are agreed, and that's it.

Q. Then--I'm sorry?

A. For that effort, I get a sales commission as a sales representative.

Q. From?

A. From the manufacturer.

Q. Very good.

A. Once the customer pays. If I don't sell, I have no sales commission.

In other words, they don't give me an allowance, or they don't give me a salary, or nothing else. Like a freelance.

Q. I understand.

A. In that position, today I think that there are--I don't know, the factory might tell you--around 20 sales representatives spread all around the United States.

Q. We are talking about related to Group Brazil, Inc.?

A. No, Group Brazil had no salesmen. Group Brazil was not a wholesale operation. Our only salary was to receive and to ship to anyone that would not buy directly from the manufacturer.

Q. Okay. A couple of questions come into mind here.

A. Yes.

Q. In the hypothetical situation that we were discussing where you referred to me as the wholesaler?

A. That is right.

Q. In other words, I would then sell to the retail outfits in this type of situation?

A. Yes, sir.

Q. Okay. But Group Brazil, Inc., if I understand correctly, would warehouse products?

A. Yes.

Q. That someone in my position didn't want to have shipped directly to me?

A. Yes.

Q. Is that correct?

A. Yes.

Q. In that case would Group Brazil, Inc., have dealt directly with retailers?

A. No. I mean, with retailers or--

Q. Yes. In other words, if I, as a wholesaler who dealt with retailers--

A. (Nods head.)

Q. --didn't get my shipment directly from the manufacturer?

A. Yes.

Q. Explain to me how Group Brazil, Inc., would come into the picture?

A. Okay. The manufacturer will ship on a consignment basis to Group Brazil.

When any salesman, in Chicago, whatever, writes an order to anybody, one of their customers, which I don't know, they have their own customers, they send me the order, the trial order, because they don't want to receive directly a big cargo.

Q. One second, if I may.

In other words, the Group Brazil, Inc., came into play for the option two that you described?

A. That is right.

Q. If I didn't want to get a whole carton from overseas, I can get my small shipment from you?

A. That is right, from Group Brazil.

Q. And then later in time if I wanted to change the arrangement--

A. Yes.

Q. --we could go to option one?

A. The original idea to create Group Brazil was to make the prospect customers be sure that to buy this determined product was good business.

You go to offer or to quote a product to anybody around in the States, a foreign country, they say, "Well, perhaps the sample is very beautiful, but what comes later is not as good as the sample is."

So, they are cautious.

Q. I understand.

A. Once they get confidence in the product, they start buying directly, or perhaps they continue buying locally for their own convenience, not to invest too much or whatever.

Q. Very good. Do you do your representation of the different manufacturers we have described through Group Brazil, Inc.?

A. No. One thing is Group Brazil, Inc. It was a project to make a break--to help the manufacturers make a breakthrough in the market.

My business, my source of income is acting as a self-employed sales representative, not only to one manufacturer, but to all of these described, and those that I might get later on.

Q. I see.

A. That's my source of income.

Q. Is Group Brazil, Inc., still in existence?

A. It is, but it's not working. It's not working because, I don't know, I think that the purpose for some manufacturers has already been accomplished, and they are not new manufacturers that would like to go into this process of making a breakthrough.

So, Group Brazil is not a profitable organization.

In other words, to the cost of the merchandise, we would add only an approximate percentage to cover the operational expenses, period, nothing else.

We were not acting as wholesalers, just as to try to help the manufacturers get into the market.

MR. GOLDMAN: Go off the record for a second, Sandy.

(Discussion held off the record.)

MR. GOLDMAN: You can go back on the record.

BY MR. GOLDMAN:

Q. Did you bring any records or documents with you today pertaining to the subpoena that you received?

A. I brought some, but if I would bring all of what you're going to see, I need a truck, because,

remember, that we had to make a recall, and awhile ago with these papers. I'll explain to you the nature--

Q. Can you please bring the papers in here, and let's take a look at them?

A. For example, boxes like these, I have at least 14 or 15. Cartons, this is the original carton where a person, anyone would send us the old pressure cooker to be recalled and to be exchanged.

This, we have around 34 big carton boxes, because we cut all the places in the craft paper where the sender gives us their address.

Q. May I see it?

A. Yes. To give you an example, this is one.

Q. One second, sir.

A. Yes.

MR. GOLDMAN: Can we have this marked for the record as Exhibit 1, Sandy?

THE WITNESS: You can take a copy, but I have to take that for my records, because this for me, I consider them original records.

BY MR. GOLDMAN:

Q. I understand, sir.

A. Okay.

Q. I'll tell you what, then--

MR. PAPY: Why don't you just have them run a

copy?

MR. GOLDMAN: I was going to, but maybe we will wait, because we may have a bunch of stuff to be copied.

THE WITNESS: Let me explain you the process.

MR. PADY: Wait a second. I think he wants to--

THE WITNESS: Oh, copy this.

BY MR. GOLDMAN:

Q. Yes. Go ahead, sir.

A. A person reads the ad in the newspaper, Group Brazil's address is there. So, he wraps his old pressure cooker and mails it to our address, to Group Brazil.

Q. May I ask you a question? When we are talking about the pressure cooker--

A. The recalled one. The old Rochedo non-UL, that were not UL listed, pressure cooker.

Q. And that was manufactured by?

A. Alcan Aluminio Do Brasil.

Q. Go ahead.

A. So, he wraps it, he puts it in a cardboard box, and he mails us this old pressure cooker to be exchanged.

When we receive what this gentleman mailed to

us, we cut with a scissor where the sender's address is here for our records. We put it in a box.

Then, we write a certificate of mailing, and with this certificate of mailing, we go to the post office and mail to this gentleman the brand-new pressure cooker in replacement of the old one that he mailed us.

Q. Okay. Sir, what you were just talking about, the cardboard box that you received, and then the certificate of mail, I show you a copy of two documents.

A. Yes.

Q. And this is marked exhibit, or will be marked Exhibit 1.

A. Yes.

Q. Are those two documents reflected on this copy?

A. Yes.

Q. Okay. So, you can mark this as Exhibit 1.

(Thereupon, the above-referred to document was marked as Plaintiff's Exhibit No. 1 for identification.)

BY MR. GOLDMAN:

Q. Go ahead.

A. You understood the process here?

Q. So far, so good.

A. So, for this thing, we have arranged 15 or 16.

Q. Fifteen or 16 what?

A. Plastic boxes loaded with these certificates.

Q. And about how many would you say, in your estimation, cards are there in each box?

A. Papers like this?

Q. Yes.

A. Jesus, around 6,000, 7,000.

Q. Per box?

A. No, no, no, no.

Q. A total in all the 15 or 16 boxes, about six or 7,000?

A. And perhaps a little bit more.

Q. Okay. Please continue.

A. And all the pieces of these boxes that they send us, they are also by alphabetical order in big cardboard boxes.

Q. And these are kept where?

A. I have it in my office.

Q. Okay.

A. I have a lot of them.

Q. I'll bet.

Now, can you explain about the documents that

you handed Mr. Papy and myself?

A. Yes, for instance, first I want to specify that there are three different groups of pressure cookers.

Group number one is the Rochedo pressure cooker that was not UL listed, which is the one that was recalled.

They have three item numbers, according to the capacity, and it's specified these are not UL.

Then, there is a second Rochedo brand, but it's UL listed, and it's specified here on the catalogs and on the pressure cookers and whatever, UL listed.

The item numbers are different. Instead of, for instance, for the four liters, 8042, it's 8045, 55 and 05.

Q. So, those numbers differentiate between UL and non-UL?

A. That's right. And there is a third group, that instead of being the Rochedo brand, it's the Maitre's brand, UL listed. And they have these other different item numbers.

Q. How are you so familiar with all these different models?

A. Because I used to sell them, and I still sell them. Not this one; this is discontinued.

Q. I understand.

A. But the UL listed I keep on selling.

Q. When you say this one is discontinued, we are talking about the non-UL?

A. The non-UL, that is right, yes.

Q. Very good.

A. So, this is one.

MR. PAPY: Let me interject for a second.

As far as relevance and all of those kinds of objections, do you want to give me a standing--

MR. GOLDMAN: You have got a standing objection to anything except form, and at any time you can just tell her form.

MR. PAPY: Okay.

THE WITNESS: In the group Rochedo, No. 1, inside the box, it was a knock down pressure cooker.

In other words, the handles were not assembled, like Mirror does, like Presto does.

So, inside there was a plastic bag with the different spare parts, with the handles and everything, with instructions, as well as a booklet that shows the features of the pressure cooker and instructions.

BY MR. GOLDMAN:

Q. Okay. Hang on a second. I want to get copies of these so we can mark them.

Now, when you say the spare parts that came in the plastic bag, would the gasket have been one of those plastic parts?

A. The rubber gasket?

Q. Yes.

A. Yes. Wait. The gasket was supposed to be already on the lid. Only the handles. Like the other ones. The same thing like all the manufacturers do.

Wait just one second.

When anybody would bring this or mail us, and we received this, in the new pressure cooker that we are sending back, the UL Maitre's pressure cooker, we include inside this circular, and this is a sample of this certificate of mail. And this is a sample of letter H, filed here in this box, all the addresses we have.

Q. Just for the record, may I use these copies?

A. That's for you, yes, sir, as well as that one, that's for you.

MR. GOLDMAN: Let's have these marked Exhibit 2, which Mr. Diaz indicated were samples of the certificates of mailings, copies.

THE WITNESS: Yes.

(Thereupon, the above-referred to document was marked as Plaintiff's Exhibit No. 2 for identification.)

BY MR. GOLDMAN:

Q. And what was this again, sir?

A. This is a circular letter where we explain to the customer, we call it customer, because it's Alcan's user--

Q. Right.

A. --that we are shipping the new pressure cooker. That you're going to see this pessure cooker is Maitre's, made by the same manufacturer, that the pressure cooker brand Rochedo and so forth. It's an introduction to the pressure cooker.

MR. GOLDMAN: And can we have that document marked as Exhibit 3, please?

(Thereupon, the above-referred to document was marked as Plaintiff's Exhibit No. 3 for identification.)

BY MR. GOLDMAN:

Q. Can you tell me, if you know, how the recall from the Rochedo non-UL pessure cooker came about?

A. How?

Q. Okay. I'm sorry. Strike that.

Can you tell me how Group Brazil, Inc., got

involved in the recall of the Rochedo pressure cooker?

A. Yes. As I told you, Group Brazil started operations on July 1, 1983. The corporation was created on March 1st, I believe it was, 1983, but we were just planning how to do things and organizing.

We, I mean they.

In July, when we started, we had nothing at all in the warehouse, no merchandise at all. We were just waiting for merchandise to come to the warehouse.

In August, the first shipment arrived of stationery, papers.

In September, I think that the first pressure cookers, Maitre's pressure cookers arrived to the warehouse.

On October 2nd, and I remember very well the date, was when Alcan met for the first time with a group of salesmen in the United States to create their sales forces here in the States.

They were not, and they are not my salesmen, neither Group Brazil's salesmen.

They were, and they are Alcan Aluminio Do Brasil salesmen that work also on a freelance basis, independent sales representatives.

So, what happened was, that for the first five or six months when Group Brazil started operation,

opening the warehouse, I mean, the movement was very, very poor, almost none. It was a coincidence that by November, 1983, I think it was November, 1983, I knew that a recall was about to start.

So, I said to the manufacturer, to Alcan, "The movement, the business we are generating from this warehouse, the in and outgoing merchandise is almost nothing. So, we are paying a rental here in the warehouse.

"Why don't we make the Pochedo recall here in order to save money? It would be a waste of money that you hire somebody in order to make the Pochedo recall, because it's going to cost you money."

So, with the same people we had in the warehouse, one person, period, we can take care of the recall, and at the same time we can take care of the orders that these salesmen will mail us in order to ship from this local warehouse.

Q. Okay.

A. And I said to Alcan, "I'm willing to do the recall."

It's not the first time that I have been involved, not in a recall, but in something like marketing, or sampling, or advertising.

So, I said, "I'll take charge of this recall,

and it's going to be part of our operation until the recall ends."

Q. Okay.

A. So, the whole idea started on November, yes, November, 1983--

Q. Right.

A. --before the recall was already official.

What I didn't know is all the headaches that this recall would give me later on, otherwise, I wouldn't have offered my services for sure.

Q. Let me ask you this: How did the communication between you and Alcan Brasil take place?

A. In what respect?

Q. Did you write them a letter?

A. By phone, by letters, whatever. They come here. They have an export manager that comes to the United States twice a year, three times a year.

Q. What is his name?

A. Alberto Araujo.

MR. PAPY: A-r-a-u-j-o, that's the guy?

THE WITNESS: Yes. At that time he was not the export manager. At that time there was another fellow.

BY MR. GOLDMAN:

Q. Does he have an office here?

A. No, no. He comes like all the Brazilian manufacturers.

They have export managers. They live there in Brazil, and they come to the United States to work with the salesmen or to see the market, how things are going, and that's it, to the exhibitions, to the housewares exhibitions.

Q. When he comes to the United States, Mr. Araujo--

A. Araujo, yes.

Q. --does he visit with you when he comes here?

A. He visits with me, the customers, yes.

Q. And did he back around the time of this recall?

A. Well, during this recall, the export manager was not--in November 1983, I mean, it was not Alberto Araujo. It was another gentleman.

Q. Do you remember his name?

A. Jose Roberto Aranha, A-r-a-n-h-a.

Q. Mr. Aranha?

A. Yes.

Q. Did he meet with you in the United States around the time of this recall?

A. When we started, yes.

Q. And had you met with Mr. Aranha prior to the

recall?

A. No. Wait. Aranha was here.

And I remember quite well, on November 1983, before the recall officially started, there was an announcement broadcasted, I think, by some of the radio stations here, local and perhaps in all of the United States, regarding an agreement between the Consumer Products Safety Commission and Alcan to make a recall of these non-UL pressure cookers at a future date.

We are talking about November.

Q. This is when the agreement took place?

A. That's when the agreement, the Consumer Products Safety Commission and Alcan made the agreement to make a recall.

Q. Do you know where these meetings took place, if you know?

A. I don't know. I think Washington. That's just a thought.

Q. Only if you know.

A. And that's when I said to Aranha, that we could use the warehouse, because it would be cheaper to do the recall there than to hire somebody else to pay them extra money to do the recall.

In January, the recall started, with this kind of an ad, the worst I have ever seen in my life.

MR. GOLDMAN: Can we have this marked--

THE WITNESS: That's for you, yes.

MR. GOLDMAN: --as Exhibit 4, the ad that Mr. Diaz is referring to?

(Thereupon, the above-referred to document was marked as Plaintiff's Exhibit No. 4 for identification.)

BY MR. GOLDMAN:

Q. Go ahead, tell me about the ad, Mr. Diaz.

A. The ad, I have to make some clarifications. I don't know whether the Spanish translation of that, what they were trying to say in English--I don't know what they were thinking about.

Q. We don't have to go--

MR. GOLDMAN: Go ahead, Steve.

THE WITNESS: Study for yourself.

MR. PAPY: I just want to ask him if these are all part of one ad. Maybe you want to do it. They are stapled together. For your exhibit, you may want to --

THE WITNESS: That's the circular letter or note--

MR. GOLDMAN: Hang on one second.

BY MR. GOLDMAN:

Q. I am showing you now a document. Is this the

ad that you were referring to?

A. Yes, that was published in the newspaper.

MR. GOLDMAN: Can we have this marked as Exhibit 4, please?

THE WITNESS: It was published in the newspapers.

BY MR. GOLDMAN:

Q. Which newspaper?

A. Puerto Rican newspapers, and in some major newspapers in Miami. I think that in New York. Alcan is the one that knows where this ad was published.

Q. Hold on one second.

Go ahead. Continue.

A. On January, during the first ten or 15 days, I don't remember--

Q. Is this January '84?

A. Exactly. The recall started officially with this ad, and people started coming to our address to change personally the pressure cookers.

Q. Did these people live in Miami, do you know?

A. Most of them, yes.

We had for our control two different kinds of pads, in order to register what we were receiving.

Like this, I have ten pads. I don't know. These small pads are those people that went directly,

personally to the Group Brazil address with their old pessure cooker to be exchanged.

And on these yellow pads, they were registered this, others that were mailed.

Q. Okay.

A. So, we started loading all these things, and we just gave the new pressure cookers to all of them.

In that time, Aranha resigned the company. He left. I don't know why, but he left.

And, then, Mr. Araujo took his place. As if, not export manager, as in charge of exports or whatever.

Q. Let me ask you, prior to the recall, when did you first start representing Alcan in the United States?

A. We started--not in the United States. We started selling or quoting Alcan's products in 1972.

Q. Who is we?

A. We, I mean--I always say we. I.

Q. This is not Group Brazil, Inc., but this is you as a salesman, manufacturers' rep?

A. Sales representative.

Q. When did you start representing Alcan in the United States?

A. Not in the whole United States.

Q. Just in Miami?

A. Just in the Miami area.

Q. When did that occur?

A. Well, in 1973 I came to Miami. I was living then in Puerto Rico.

And some wholesalers bought directly without any warehousing here, just from Brazil to their warehouse.

That was 1973. Yes. Minimal amount. Three hundred cookers, whatever. Nothing much.

Q. What kind of arrangements did you have, as far as your territory, if any, with Alcan Aluminio Do Brasil?

MR. PAPY: Then or now?

BY MR. GOLDMAN:

Q. I'm sorry. At the time that you came to Miami.

A. I was a manufacturers' sales representative as I am now.

Q. Was there an exclusive territory?

A. No.

Q. Do you know of other manufacturers' reps representing Alcan Aluminio Do Brasil in Miami in 1973?

A. Oh, no, I was the one.

Q. You were the only one?

A. I think so.

Q. To your knowledge?

A. (Nods head.)

Q. You had done business with Alcan in Brazil prior to your coming to Miami in '73?

A. In '72 I made business. I mean, I wrote orders for Alcan in Puerto Rico, yes.

Q. When you transacted your first business with Alcan Brasil, where did that take place?

A. In other words, as a manufacturers' sales representative?

Q. Yes.

A. In Puerto Rico.

Q. Can you tell me how those transactions went about?

A. Well--

Q. What happened between you and Alcan?

A. I was looking for lines, as I am looking now, acting as a sales representative for some other manufacturers.

I have, as usual, as all the manufacturers' sales representatives have, an order book. I write the order to the customer that is interested to buy to

Alcan, the pressure cookers or whatever.

I mail the order to the manufacturer, and the manufacturer ships to the customer.

Q. Perhaps I didn't phrase that question well, sir.

How did it come about that you had an order book from Alcan?

A. No, no, not an order book from Alcan. Myself. An ordinary order book of a sales representative, Manuel Diaz.

Q. Let me get specific: Did you ever go to Brazil to make arrangements with Alcan to sell their product?

A. To sell their product?

Q. Did you ever go down to--

A. Yes, I go to Brazil several times, yes.

Q. Before you ever sold their product?

A. Before?

Q. Yes.

A. No. It was prior to selling their products, I went to Brazil. I mean, after. Not prior, after.

Q. What I don't understand, the first time you sold Alcan Brasil products--

A. How did it happen?

Q. --how did it happen--

MR. PAPY: How did you get your initial relationship?

BY MR. GOLDMAN:

Q. My question is, I can't sell you a brand-new Buick today, because I don't have a distributorship.

A. I know what you mean, yes.

Q. Okay. So, explain that to me.

A. I was told in 1972, Alcan Aluminio asked one person in Brazil, living in Brazil, to make an exploratory trip to the Caribbean, Latin American customers, to appoint a sales representative, to get sales representatives in the territories.

And this gentleman, Eric Schmidt, I remember, he went to Puerto Rico, and he was asking for a sales representative to several wholesalers or distributors, I don't know. Somehow, and I never knew the source, somebody recommended me as a salesman.

Q. Right.

A. So, this Mr. Schmidt got in touch with me, and asked me if I wanted to be the sales representative for Alcan Aluminio, who manufacturers pressure cookers, aluminum utensils.

He showed me a sample of the pressure cooker at that time, and explained to me what Alcan Aluminio Do Brasil was, and I said, "All right, I'll represent

them."

Q. Now let's jump ahead to 1973 when you came to Miami.

A. Yes.

Q. Was that just a continuation of your relationship with Brasil, with Alcan Brasil, or did you have new arrangements at that time?

A. No. I asked them to make me--give me an opportunity to see whether the pressure cookers that I was selling in Puerto Rico, I was able to sell it somewhere in the United States.

And for me, the easiest place to come, because it's expensive to be here, living in Puerto Rico, was Miami.

And I showed the samples to prospect customers here, as well as I showed them in Puerto Rico, and I sold, I think I got two or three orders. Very scarce.

Q. When you asked them to give you that opportunity, how did that communication take place?

A. I'm not sure, but I think, "May I go and try to sell there?" They were not selling here. "May I go and try to sell them in order to see--"

Q. My question is, did you go to Brazil?

A. No, no.

Q. Did you phone them, did you write them? How did the communication take place?

A. It could have been by phone. It could have been. I'm not sure.

Q. And when you asked if you could have a chance to do that, what was their response to you?

A. "Yes, sir. You may try to sell them in the States."

Q. How long was it between when you came to Miami to sell the Alcan Brasil products for the first time until the representative from Alcan Brasil came to visit you in Miami?

A. Let me point out that in 1973 I was living in Puerto Rico. So, I was making to the States exploratory trips to see what the reaction was.

And in that time, I recall that the person that was at that time export manager met with me here. I think it was once. And I think it was 1974.

Q. Is this Mr. Aranha at that time or this is someone else?

A. Somebody else, prior to that. Mr. Chiodi, C-h-i-o-d-i.

In that time, I cannot tell you exactly whether it was 1973, 1974. I just don't remember; but he went here in order to feel the market, to see

whether there were possibilities of making a breakthrough at that time.

Q. Do you have any written agreements with Alcan Aluminio Do Brasil, either you personally, or Group Brazil, Inc.?

A. A manufacturer's sales representative cannot ask, at least that's the way I think, a contract for representation to any manufacturer, because how good is a contract, if the product you cannot sell?

So, if you cannot sell the product, you have to get something else, otherwise, you're in bad shape.

And at the same time, if you are really producing to the manufacturer, the manufacturer will think, "Why am I going to change?"

So, it's a mutual agreement, verbal agreement, gentleman's agreement, whatever.

Q. In short, is that a no? You have no written agreements?

A. No.

Q. Okay. Did you have any written agreements with them regarding the recall?

A. No. I am an old dinosaur, my friends. If things don't work right, that's it.

Q. I am certainly not questioning your judgment.

I am only trying to find out what exists.

A. When I offer--

MR. PAPY: You are not attacking the man's integrity, Marc, honesty?

MR. GOLDMAN: Hardly.

THE WITNESS: When I offered my services to do this recall, and I tell you now, if I would have known--

It's true.

BY MR. GOLDMAN:

Q. I know.

A. --all of this headache, I would shut my mouth definitely.

Q. That's okay. From the period of time, when you first came to Miami and started to sell Alcan Brasil products here, how were you paid?

A. On a commission basis always.

Q. How did you receive the payment?

A. Usually through the bank. The process is this: Alcan sends you the merchandise, let's say, $1,000 worth of merchandise. The Brazilian bank instructs the local bank, "Pay Manuel Diaz 'X' amount, $50, five percent on FOB," when you pay the customer, and the bank reimburses the $950.

Q. Do you have any records to indicate payments

you have received from Alcan Brasil at any time since you have been selling their product in the United States?

A. Oh, yes.

Q. Did you bring them with you today?

A. Today?

Q. Yes.

A. I have to go to the office and bring.

For example, a check, you mean?

Q. Any kind of records to indicate payment from Alcan to you while you sold their product here in Miami.

A. I have copy of the checks, of sales commission checks, photostatic copy.

Q. You didn't bring any of those here today?

A. No.

Q. I did ask you to, but it's all right. We are friends.

Do you also have at your office copies of your invoices or order forms that you place to them?

A. When an order is written, I send the order to the manufacturer. They ship to you, for instance, if you are the buyer. They send the original documents to the customer through the bank, and they send me a copy of that.

And, then, I attach it to the order I send, and when I receive the check, I attach it to the deposit I make in the bank.

Q. Would it be possible at a later date for me to get copies from you to show your order, invoice, and payment for particular shipments?

A. Well, not for all these years.

Q. I understand, but it would be possible to get some?

A. I have orders that I can show you any time.

Q. Good.

A. Recent orders, of course.

Q. When you came to Miami for the first time, in regards to selling the Alcan Aluminio Do Brasil products, do you know if Alcan Brasil was selling their products in the United States in other places?

A. Which products, because I think that Alcan had several products, domestic, like the pressure cookers, and they have also industrial products.

Q. Let's just talk about the pressure cooker for a moment.

A. To my knowledge, before I came here for the first time, I don't think so.

Q. Anywhere in the United States, not just Florida?

A. I don't think so; but you have to check with them, not with me.

Q. I understand. This is only to your knowledge, sir.

A. Yes. To my knowledge, no.

Q. To your knowledge, does Alcan Brasil sell their products in other areas in the United States now?

A. Today?

Q. Yes.

A. Oh, yes, they are selling to the United States. They are selling the Maitre's pressure cookers in the United States.

Q. Did you have any responsibility for Alcan starting to sell their products in other areas in the United States other than the Miami area?

A. No. Directly, no.

In other words, I gave them the idea to appoint salesmen, their salesmen, not mine or Group Brazil's, their salesmen.

And they appointed these salesmen, and I have no idea how much they are selling, but I know they are selling for sure.

Q. Do you know if there are other people such as yourself, meaning a manufacturers' sales rep, in the Miami area selling the Alcan Brasil products?

A. I hope not.

Q. You hope not. Does that mean you don't think there are?

A. No, I don't think. As a manufacturers' sales representative, no.

There are wholesalers that they are selling, but the orders, they should pass through me.

Q. How about anywhere else in Florida, does Alcan have other people such as yourself in other areas in Florida, do you know?

A. I don't think so, but I haven't been anywhere in Florida. In other words, I have not had the time to explore the market of even Fort Lauderdale. I have been taking care of this local Miami and Puerto Rico, period.

Q. Let's talk in terms of dollars and cents in the last 12 months. How much gross income, in other words total sales, do you do on behalf of Alcan Brasil in this area?

MR. PAPY: I object to the form.

THE WITNESS: In Miami? In Miami you mean?

BY MR. GOLDMAN:

Q. Yes.

A. In gross sales, you mean?

Q. Yes.

A. Not commission sales?

Q. No, gross sales.

A. In the last 12 months here, the most should be $60,000.

Q. And that would be just of Alcan Brasil products?

A. Yes.

Q. Of that--go ahead.

A. I don't understand very well your question. In other words--

Q. Let me rephrase it for you.

A. Yes.

Q. What I am trying to find out is, in the last 12 months, what is your gross sales in the Miami, Florida area?

A. As a sales representative?

Q. As a sales representative of Alcan Do Brasil products?

A. The most, and I tell you, the most should be $60,000, approximately. I cannot tell you.

Q. Of that amount, to your knowledge or in your best estimation, how much of that is pressure cooker sales?

A. I would say 99.9 percent of that amount.

Q. We have some documents here that we referred

to before, and we didn't have copies. I would like to just briefly clarify them so we could have them marked.

A. You can keep these.

Q. I understand. I need to mark them for the deposition.

(Thereupon, the above-referred to documents were marked as Plaintiff's Exhibits Nos. 5, 6 and 7, respectively, for identification.)

Q. Okay. Sir, I show you what's been marked as Exhibit 5. Could you briefly explain what that is for the record?

A. Oh, yes. When this ad was published, people started writing to that address.

Q. Excuse me. Are you referring to the ad that's been marked as Exhibit 4?

A. Yes, this one. People started writing to our address, Group Brazil's address, what this recall was about, how to mail, or to ship, or to exchange the pressure cooker.

So, Mr. Araujo wrote this circular letter mailing back an answer, instructing them how to make the exchange, to send the pressure cooker here, that we will send the other one, so forth.

Q. Okay. Where was Mr. Araujo?

A. He was here in Miami at that time.

Although this is undated, because we knew that questions would keep on coming up.

This circular letter was issued in early January when the recall just started, that people started calling us, "Give an address, send this," in order to instruct them what the recall was about.

Q. And I show you what's been marked as Exhibit 6. Could you explain what that is, please?

A. This is a picture, a copy of the poly back where the spare parts, such as the handles, were wrapped inside and put inside the pressure cooker of this old Rochedo pessure cooker.

Q. Is this a copy of some document that came in the pessure cooker?

A. No. I kept one of these plastic bags by coincidence. I have it, a plastic bag, an empty one, that the person that sent us one of these old pressure cookers, it had inside everything.

She was very neat, and she wanted to do things right, and she unassembled the cooker, and sent us the old pressure cooker.

So, I just kept it.

Q. So, in other words, this is a copy of a document that came in that plastic bag with the handle?

A. Yes, yes, that is right, yes.

Q. And we have what's been marked Exhibit 7, sir. I think you gave some testimony on that, but just please identify it for us.

A. This is--

MR. PAPY: Was this a cover sheet, originally, the first sheet?

MR. GOLDMAN: Yes.

THE WITNESS: To identify the manufacturer's name and home address, the head office address, and the phone where they have the plant, which is another different address; the person in charge of this recall, Benone Jose Lara; and the three different groups of pressure cookers, Rochedo, Maitre's.

MR. GOLDMAN: I think that's it, Steve.

CROSS-EXAMINATION

BY MR. PAPY:

Q. Mr. Diaz, are you familiar with the term independent contractor?

A. No.

Q. In your work here as a manufactures' representative, do any of the manufacturers assign you duties on a day-to-day basis?

A. No.

MR. GOLDMAN: Before you continue, I assume I have the same standing objection, so you and I won't bother.

Go ahead.

MR. PAPY: Sure.

BY MR. PAPY:

Q. In fact, do they tell you how to go about running your business at all?

A. No.

Q. When the sales orders are processed to Brazil, is the sale actually consummated in Brazil?

A. I don't follow-up.

Q. Well, the sales are shipped to Brazil, the sale orders are sent to Brazil?

A. Yes.

Q. And it's in Brazil that the decision is made whether--

A. Oh, yes.

MR. GOLDMAN: I object to the form.

THE WITNESS: Sometimes they approve and sometimes they don't.

BY MR. PAPY:

Q. When you entered negotiations concerning Brazil Group, Incorporated--

A. Group Brazil.

Q. My mistake.

--were there any negotiations with the people at the various Brazilian companies?

A. Oh, yes.

Q. And in those negotiations, did the people you deal with explain to you that they did not want to participate in any trading activity in the United States themselves?

A. Not when we started talking.

Q. Prior to operations of the warehouse involved, did they explain that to you?

A. Before that. In other words, we started thinking about this Group Brazil idea in November 1982.

Two different manufacturers invited me to go to Brazil in January 1983. I explained very clearly that I had no money at all to start a project, such as renting warehouses and so forth.

So, the first thing that was set up in Brazil, and that was 1983, was that these two manufacturers, Alcan, and the other one, Melhoramentos, the stationary, would help me to initiate operations. And this would work, Group Brazil would work as a depository for the manufacturer. That was January 1983.

I think it was in March 1983, two months later, one or two months later, when I was back to Miami, and I was asked to look for a warehouse, a good location.

So, I found this location, and I had reported what I thought was best to rent.

And in March 1983 they asked me--then, in February 1983, excuse me, they asked me to create a corporation, because they could not operate themselves, because they were foreign companies.

So, I was asked to create a corporation, Group Brazil, Incorporated. I did that on March 1st.

And later Alcan, in March, was the first one to tell me by telex that the billing, the invoicing process, perhaps it should be done by Group Brazil, and not by Alcan Aluminio Do Brasil, because that would mean that they would have business directly here, or they would be getting involved with taxes and so forth.

And besides, there was another Alcan, Alcan, U.S.A., which is different. They didn't want to create conflict between one company and another.

So, the original plan was changed, not only by Alcan, by others, three, four, five, six times. It was a mess. If I would have known that, no way ever that I would have got involved in that.

Q. Okay, sir. The answer to my question then, I guess, is that the people that you dealt with in Brazil are different companies, I think you just mentioned Alcan Do Brasil--

A. Yes.

Q. --explained to you they did not wish to be doing business directly in the United States; is that correct?

A. That they couldn't do business directly.

Q. Couldn't do?

A. Yes, because they had to ask for a special permit to the government.

To get dollars out of Brazil is not easy. They have to go to the Central Bank, or something, to request any release of dollars.

And because of that, they knew it was not very easy for them to open here without any--a lot of paperwork to order here a subsidiary or whatever.

So, they said, "We trust you. You open the corporation, and you start doing business," and that's it.

Q. Now, did any of these Brazilian companies own any interest in Group Brazil, any shares of stocks?

A. No, no.

Q. Did any of the officers or directors of any of these companies--

A. No.

Q. --serve in Group Brazil?

I mean, in other words, were they officers of Group Brazil?

A. No, no.

Q. Were you the only officer of Group Brazil?

A. I was the president of a very little company. My wife was the vice-president. One of my daughters was the secretary, and the other one was the treasurer.

Q. During your dealings with Alcan Do Brasil, that period of time from '73 to the present time, have you ever had any business relationship with Alcan Corporation, that's the American company?

A. No. The first that I had any direct contact was with Mr. Salibra.

Q. The same question regarding Alcan, Limited, the Canadian corporation?

A. No.

Q. Have you had any business dealings with them?

A. No.

Q. I notice that the ad that was marked as Exhibit 4 is in Spanish?

A. Yes.

Q. Do you know why that is, sir?

A. Why it is in Spanish?

Q. Yes, sir.

A. Because, as I told you before, 95 percent, that's just approximate figure, of the recalled pressure cookers were going to be recalled in Puerto Rico and in the Latin areas.

I don't know whether they published in English a similar text. I have nothing at all to assure you that they did or did not. You have to ask them. I think they should have or they did. I don't know.

Q. In your testimony, when you were mentioning you were acting as a representative for Alcan Do Brasil, and that you were taking orders, and then sending them to Brazil, during the entire period of time that you have taken orders on products that they have manufactured, have the sales been consummated in the same way, meaning that the decision is made in Brazil?

A. Always. Not only for Alcan, for all the manufacturers. They decide whether they can give credit regarding the prices or whatever other terms, shipping terms.

MR. PAPY: I don't have anything further.

MR. GOLDMAN: I have a couple.

REDIRECT EXAMINATION

BY MR. GOLDMAN:

Q. Regarding the decision by Alcan Brasil whether or not a particular sale will eventually happen, after they make that decision, do they contact you?

A. Well, they contact me if they say, "No way we are going to ship this," or "This price is not approved," or "This payment term is not approved."

In other words, I mail them the order. If I receive no objection, it means that they are going to ship.

If by any chance they decide that the customer is not good enough for them, or that the prices they are requesting are not feasible, they send me--mostly by phone, "Hey, you're crazy, you cannot quote this price or give these terms."

Q. Assuming there's no objection to the order, who do they contact?

A. They just send to the customer an advice of shipping, the day they are going to ship.

Q. You were talking about the creation of Group Brazil, Inc.?

A. Yes.

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Q. You as a manufacturers' rep sold Alcan Brasil pressure cookers; is that correct?

A. Before the--yes.

Q. And Group Brazil, Inc., as a corporation, sold Alcan Brasil pressure cookers?

MR. PAPY: Object to form.

THE WITNESS: It's not--they didn't sell. Group Brazil was created--

BY MR. GOLDMAN:

Q. Okay. I understand the whole scenario we described with option one and option two before.

My question is, is it possible that someone in the Miami area, after the creation of Group Brazil, Inc., could have bought a shipment of Alcan Brasil pressure cookers from you as a manufacturers' rep?

MR. PAPY: Objection to the form of the question, speculative.

THE WITNESS: As a manufacturers' rep?

BY MR. GOLDMAN:

Q. Yes.

A. Let's say, one customer, any customer in Miami, if they knew that they had two options, either they bought directly from the manufacturer and the shipment went directly to them through the bank, or they wanted to make a trial, a test order.

Q. I understand. Let me stop you for a second.

If a wholesaler in Miami, and this is after the creation of Group Brazil, Inc., as a corporation, wanted to buy directly from Alcan in Brazil, would they deal with you for this sale?

A. As a sales representative, yes.

MR. PAPY: Same objection.

BY MR. GOLDMAN:

Q. And if they wanted to make a trial purchase, would they have dealings through the course of that sale with Group Brazil, Inc.?

MR. PAPY: Same objection.

THE WITNESS: They would deal with Manuel Diaz, as one of the sales representatives of Alcan Aluminio.

And then Manuel Diaz would give the order to Group Brazil, and Group Brazil will deliver or would expedite that order as a depository, and at the same time, would bill to the customer.

And once the customer has paid to Group Brazil, Group Brazil would reimburse to Alcan or to any other manufacturer.

BY MR. GOLDMAN:

Q. When Group Brazil was created, you were discussing with Mr. Papy some of the foreign

manufacturers' interest in the creation?

A. (Nods head.)

Q. Who was interested in the creation of Group Brazil?

A. The idea was born here in Miami while one of the directors of Melhoramentos, the stationary--

Q. Right.

A. --dropped by. And we talked in my house, and he asked me how to make things move faster, or how to make a faster breakthrough in this market, because it was hard for them to quote direct prices, FOB prices, Puerto Santos, and so forth, to American buyers, especially to chain department stores and so forth.

Q. Was Alcan Aluminio Do Brasil involved in the suggestion to create Group Brazil, Inc.?

A. No.

MR. PAPY: Object to the form.

THE WITNESS: No. In this first conversation regarding creating a warehouse here was between Dr. Murilo.

BY MR. GOLDMAN:

Q. Did you have any conversation or communications with anyone at Alcan Aluminio Do Brasil about the creation of Group Brazil, Inc., prior to its creation?

A. Prior to the creation of the corporation?

Q. Yes.

A. Oh, yes. When Murilo and I talked about having a warehouse that would help their merchandise make a breakthrough here, I said, "It would be good to ask other manufacturers to join this idea, and it would be better that six or seven would participate in this project than one alone, because then the expenses would be split in six different parts instead of one."

Q. What was the result of your communications with Alcan Brasil regarding the creation of Group Brazil, Inc.?

A. When Murilo went back, Dr. Murilo went back to Brazil in November, I said to him to speak with some other manufacturers. He mentioned Alcan would be ideal for this.

He went back to Brazil. He spoke with the manager of this division in Brazil at that time. He also resigned, and there's a new one.

And this other gentleman, Ingo Schmidt, he liked the idea.

So, on January, 1983, they asked me to go to Brazil to explain more what I was thinking about.

Q. Who is they?

A. Alcan and Melhoramentos. They both invited me to go over there and explain about this project we had in mind. We, because it's Murilo's and mine.

Q. You said that you had thought it would be a good idea if several manufacturers participated?

A. Yes.

Q. Could you explain what you mean by participated?

A. The original idea was to set up a warehouse here.

Let's say that its fixed expenses per month, rental, electricity, and all the utilities, whatever, would be, let's say, $5,000, $6,000 per month.

The original idea was to create a petty cash fund by all the manufacturers that would participate in this project, and to give me some advance money as a petty cash fund, and once the money is exhausted, I would mail them the receipts, and they would reimburse me.

And, in other words, that the expenses, the monthly expenses of this project would be sponsored by all in even parts, in even shares, whatever.

Q. Did this participation plan eventually come into being? Did manufacturers participate in this petty cash fund that you just described?

A. At the beginning, they all say yes, but later, these legal technicalities, which I don't know, they say it was not possible for them to participate in that that way, because they would have to subscribe themselves as foreign business partners or whatever. I don't know. And, so, they changed the whole procedure.

Q. Okay. When the procedure was changed, was Alcan Brasil one of the ones who changed it?

A. Oh, yes.

Q. Okay. And did Alcan Brasil, or a representative of Alcan Brasil speak to you about how they wanted to change the program for Group Brazil, Inc.?

A. Yes.

Q. And you stated before there were some billing and shipping changes. Were those instituted by Alcan Brasil?

A. I don't know who instituted that, but they instituted them.

Q. Did Alcan Brasil in fact make billing and shipping changes from the original arrangements?

A. Well, from the original project, yes. In other words, they never--before we started functioning as a warehouse, as Group Brazil, everything was changed.

Q. Did someone from Alcan Brasil explain to you, and not through anybody else, is what I am saying, did you talk to someone from Alcan Brasil about the problems that they thought they were facing, and why they wanted to make these changes?

A. Oh, yes.

MR. PAPY: Object to form.

THE WITNESS: Yes.

BY MR. GOLDMAN:

Q. So, after you had this conversation, did someone from Alcan Brasil tell you how they wanted you to go about it so you could do the business here?

MR. PAPY: Same objection.

THE WITNESS: (Nods head.)

BY MR. GOLDMAN:

Q. Can you answer out loud?

A. Yes.

Q. Okay. Just one last brief line.

You mentioned to Mr. Papy that your knowledge of Alcan Corp., and Alcan, Limited, is from your contact with Mr. Salibra; is that right?

A. When the recall started, Mr. Salibra came to Miami to meet with Mr. Aranha before the recall started. That was November. To explain to him, because he was in transit here, about the procedures,

the announcement that a recall is going to be made in a future date, and that he wanted to know the concentration, the distribution concentration areas in order to publish this ad.

Q. Who wanted to know?

A. Mr. Salibra. Who else?

Q. That's okay.

A. Well, one of them. That's when I met Mr. Salibra.

Q. Did Mr. Salibra meet with you at the same time he met with Mr. Araujo?

A. Aranha. Araujo came later. Yes, sir.

They asked me to find out or to give them approximate percentage of distribution per area, and I answered just like that, 90 percent should be Puerto Rico, and the other ten percent should be in the Latin areas of New York, New Jersey, Miami or Chicago. Wherever there's a Latin area, big concentration, pressure cookers are sold.

Q. Who did Mr. Salibra tell you he was when he met with you?

A. The attorney of--

MR. PAPY: Objection to form.

THE WITNESS: --of Alcan Aluminum Corporation, I think.

MR. GOLDMAN: That's it.

MR. PAPY: Two questions.

RECROSS-EXAMINATION

BY MR. PAPY:

Q. The procedure that you just discussed with Mr. Goldman concerning the changes instituted, were those procedures changed prior to the warehouse actually beginning operation?

A. Yes. And, then--

Q. Pardon?

A. The first changes prior.

Q. Okay.

A. And the other changes, later.

Q. Okay.

MR. GOLDMAN: Can you let him finish? The other changes when?

THE WITNESS: Later.

BY MR. PAPY:

Q. Which changes, what changes are you talking about as far as time to time?

A. Well, prior--

Q. Let me ask you this: I believe earlier when I asked you a question, you said that prior to the opening of the warehouse, it was communicated to you that because of legal reasons these companies did not

want to be doing business in the United States; is that correct?

A. (Nods head.)

MR. GOLDMAN: Object to the form.

BY MR. PAPY:

Q. And wasn't it those times that they instituted procedural changes regarding the doing business at the Group Brazil warehouse?

A. In those times? Pardon me?

MR. GOLDMAN: Object to the form.

BY MR. PAPY:

Q. Yes, sir, at that time, at the time that they communicated to you their concerns, and that they didn't want to be doing business in the United States, was it at that time that the procedural changes were implemented concerning the Group Brazil warehouse?

A. Well, the first changes were made in March, three months--March, yes, three months before or four months before the warehouse was opened or even rented.

Q. And what were those changes, sir?

A. Number one, that they didn't want to establish a petty cash fund and follow the suggestion that this would be worked as a depository for different manufacturers, and the expenses would be shared evenly by all participants.

Q. Right. Any other changes at that time?

A. The invoicing process, I told them that in order to simplify things and to make expenses lower, the best way is that each manufacturer would make their own billing, their own invoicing.

That way, number one, they would have control of the invoicing, of the sales, of the inventory which runs well here, is saleble, which is not in their office, and at the same time would save a lot of clerical work here in the warehouse.

By doing this, by keeping the control, each manufacturer involved in this project, we could handle the whole warehouse with one man. That would be the one to receive and to ship. And our only job would be to send proof of shipping.

And, then, the manufacturer would bill the customer directly, and we had nothing to do about-- nothing else to worry about than receiving merchandise and shipping.

Q. May I interject?

A. Yes.

Q. Were those changes that you suggested or changes that they suggested?

A. They suggested, not me.

Q. Okay. Were there any others at that time?

A. In March was Melhoramentos. In March, 1983. And a third manufacturer--

Q. That's neither Alcan nor--

A. No. The third one to join the project in September was Klimmek. He manufacturers brooms and brushes.

MR. GOLDMAN: That's okay. We don't care about him.

THE WITNESS: You don't, but I do.

BY MR. PAPY:

Q. Sir, could you tell me what that is?

A. When that ad was published--

Q. When this ad, sir?

A. No, no. That's a different one. When the other ad, this one.

Q. This ad, sir?

A. Retirando, retiring.

MR. GOLDMAN: Exhibit No. 4?

THE WITNESS: Yes.

MR. GOLDMAN: It's the same thing, isn't it?

MR. PAPY: That's claiming. It's the same mess.

MR. GOLDMAN: Let's do this.

THE WITNESS: Let me explain.

MR. GOLDMAN: Hold on a second before you

explain.

Let's mark that as 8, that one as 9, and then we will get it clear. Let her mark them.

(Thereupon, the above-referred to documents were marked as Plaintiff's Exhibits Nos. 8 and 9, respectively, for identification.)

THE WITNESS: When I saw this ad in the newspaper--

BY MR. PAPY:

Q. All right, sir. Now, you are referring to--

A. 8.

Q. Exhibit No. 8?

A. Yes. And I read the ad, I phoned Brazil to ask who was the person to draft this text.

Q. Which text is this, sir?

A. This one, Exhibit No. 8. Because here they say, and I'll translate for you, "Retiring from the market pressure cookers; Brand, Rochedo." Rochedo brands.

Q. Let me ask you a question here, sir. I am looking at--

A. That's different. This other was--

Q. Is this, that's No. 9--

A. Yes.

Q. --the ad that's also reproduced on No. 8?

A. No.

Q. Is the one that's No. 4 the ad that's also reproduced on No. 8?

A. Yes, No. 4 is the one reproduced on No. 8.

Q. Regarding the right half of exhibit No. 8?

A. I made it.

MR. GOLDMAN: Hold on one second.

Go off the record.

(Discussion held off the record.)

BY MR. PAPY:

Q. The right half of Exhibit No. 8?

A. I made that.

Q. You printed that up?

A. Yes, sir.

Q. And what did you do with this?

A. Explained what this ad should have said.

Q. This is something that you sent?

A. I sent it.

Q. To Alcan Do Brasil?

A. All customers in Puerto Rico. Of course, also to Alcan Do Brasil.

Q. Did you do anything with it in Miami, these instructions?

A. No. No, to Puerto Rico only, because that was the strongest market of the Rochedo brand pressure

cookers.

And when this ad was published, competition, all other salesmen of pressure cookers started going around customers with the ad. "These guys are in bad shape." And they started trying to make a profit out of this bad ad.

So, when I knew about it, and all customers started telling me about competition, what they were doing, I wrote a circular letter, such as this one, I mean, whatever, clarifying all the mistakes I think that they made when they made this draft.

Number one, we are not retiring from the market. We are making an exchange of the non-UL pressure cookers by the UL listed pressure cookers.

Q. All right, sir. That's fine. We were just trying to identify it. Thank you.

MR. GOLDMAN: Can you just ask him, did 9 come out after that?

THE WITNESS: When I said all this, and I told Alcan that this was the worst thing I have ever seen in my life, Mr. Manuel Santiago, he used to work in--what was the word--wait--public relations, or something.

MR. GOLDMAN: For?

THE WITNESS: For Alcan Aluminum Corporation.

That they would make another draft improving or clarifying this thing.

So, the only thing that--I haven't checked yet, but I think that they only changed the first word from retiring to claiming.

So, I don't know whether this new ad was published at all or not. I didn't even--I thought it was not even worth it to check in the newspapers. I just forgot about the ads.

So, if they published--they changed, because I think that they published the ad for one, or two, or three consecutive months in order to announce the recall.

I don't know if in that period they changed this ad for this other ad. For me, it's the same thing.

MR. GOLDMAN: Steve, do you have anything else? Can I ask one last thing?

MR. PAPY: Yes.

REDIRECT EXAMINATION

BY MR. GOLDMAN:

Q. You said Mr. Santiago worked for Alcan Aluminum Corp.?

A. I think so. I don't know. Ask them. He was the one that told me that they were going to change

this one ad to another.

Q. To your knowledge, then, Mr. Santiago worked for the American Alcan Corporation, isn't that what you said?

A. I'm not 100 percent sure, but--

Q. To the best of your knowledge?

A. To the best of my knowledge, yes.

MR. GOLDMAN: Okay. I'm done.

RECROSS-EXAMINATION

BY MR. PAPY:

Q. When did you say you met with Mr. Santiago?

A. I met him once in Group Brazil. He went--when all this recall started in January, I think that he went--he visited us there once, to see how this recall and all this recalling process was being done.

MR. PAPY: I don't have anything else at this time. I don't have any questions.

THE COURT REPORTER: Do you want a copy if it's typed?

MR. PAPY: Yes, ma'am. If he is going to order it, I will take a copy.

MR. GOLDMAN: Let's go on the record.

I would like a document that was handed to me at the end of the deposition by Mr. Diaz to be marked as Exhibit 10, and it's a letter on the

letterhead of Alcan Aluminum Corporation.

This was not produced to plaintiff's counsel until the end of the deposition. I just received it now.

(Thereupon, the above-referred to document was marked as Plaintiff's Exhibit No. 10 for identification.)

MR. PAPY: I would like to put something on, and that is, the letter was part of the initial packet that Mr. Diaz was good enough to provide to both counsel, and prior to the deposition's conclusion, Mr. Goldman had ample opportunity to ask questions concerning that document.

(Thereupon, the taking of the deposition was concluded and reading, signing and notice of filing were waived.)

- - - - -

CERTIFICATE

STATE OF FLORIDA)
: SS.
COUNTY OF DADE)

I, the undersigned authority, hereby certify that the foregoing transcript, pages 1 through 68, inclusive, is a true and correct transcript of the deposition of MANUEL SOSA DIAZ, taken before me at the time and place stated in the caption thereof.

I further certify that said witness was duly sworn according to law.

I further certify that reading, signing and notice of filing were waived.

I further certify that I am not of counsel to any of the parties to said cause or otherwise interested in the event thereof.

IN WITNESS WHEREOF, I hereunto set my hand and affix my official seal of office this 4th day of June, 1986.

Sandra Lish
SANDRA LISH,
Notary Public in and for the
State of Florida at Large.

My Commission Expires:
April 17, 1989.

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CIVIL DIVISION

CASE NO. 85-2729 CIV-Scott

Florida Bar No. 525420

LUCRECIA HERNANDEZ,

Plaintiff,

vs.

ALCAN ALUMINIO DO BRASIL S.A.; et al.,,

Defendant.

_____/

MOTION FOR REMAND

COMES NOW the Plaintiff, LUCRECIA HERNANDEZ, by and through the undersigned attorneys, and hereby moves this Court to remand the within cause to the State Court from which it was removed and in support thereof states:

1. This action was originally filed in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida.

2. Subsequent to the filing, the Defendants removed said action to this Court.

3. That based on the Affidavit of the Plaintiff, LUCRECIA HERNANDEZ, which has been filed with this Court, damages in this matter are not in excess of Ten Thousand Dollars ($10,000.00) and therefore this Court lacks subject matter jurisdiction.

4. Pursuant to Title 28 U.S.C. Section 1447(c), this Court should remand this case to the State Court in which it was originally filed.

WHEREFORE the Plaintiff prays this Court grant her Motion and enter an order remanding this cause to the Circuit Court in and for the Eleventh Judicial Circuit of Dade County, Florida.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was mailed on this 18 day of September, 1986 to: LAWRENCE A. SALIBRA, ESQ., at Peter Miller, Esq., 100 Erieview Plaza, Twenty Ninth Floor, Cleveland, Ohio, 44114 and STEPHEN A. PAPY, ESQ., at Papy, Poole, Weissenborn & Papy, 201 Alhambra Circle, Suite 502, Coral Gables, Florida 33134.

STABINSKI & FUNT
Attorneys for Plaintiff
Third Floor
757 N.W. 27th Avenue
Miami, Florida 33125-3093
Telephone: 643-3100

BY: MARC L. GOLDMAN, ESQ.

(49.37)

LUCRECIA HERNANDEZ,

Plaintiff,

v.

ALCAN ALUMINIO DO BRASIL S.A.; et al.,

Defendants.

_____/

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 85-2729-CIV-SCOTT

ORDER (1) GRANTING MOTION FOR RECONSIDERATION CONCERNING MR. SALIBRAS' ADMISSION PRO HAC VICE AND (2) GRANTING MOTION FOR REMAND

FILED by _____ D.C.
OCT - 3 1986
CLERK U.S. DIST. CT.
S.D. OF FLA. MIAMI

UPON CONSIDERATION of the Defendants' Motion for Reconsideration and the Plaintiff's unopposed Motion for Remand, it is

ORDERED AND ADJUDGED as follows:

1. Defendants' Motion for Reconsideration of Mr. Salibras' motion for Admission Pro Hac Vice is **GRANTED.**

2. Plaintiffs' unopposed Motion for Remand is **GRANTED.**

DONE AND ORDERED in Chambers at Miami, Florida on the 2nd day of October, 1986.

THOMAS E. SCOTT
UNITED STATES DISTRICT JUDGE

cc: Counsel of Record

OCT 9 1986

APPENDIX C

Supreme Court of Florida

TUESDAY, JUNE 21, 1988

ALCAN ALUMINIO DO BRASIL, S.A., et al.,	*	
Petitioners,	*	CASE NO. 72,602
v.	*	District Court of Appeal, 3d District - Nos. 87-1697
LUCRECIA HERNANDEZ,	*	
Respondent.	*	

It appearing to the Court that it is without jurisdiction, the Petition for Review is hereby dismissed. Jenkins v. State, 385 So.2d 1356 (Fla. 1980).

No Motion for Rehearing will be entertained by the Court.

A True Copy
TEST
Sid J.
Clerk Supreme Court

TC
cc: Hon. Louis J. Spallone, Clerk
Hon. Joseph P. Farina, Judge
Hon. Richard P. Brinker, Clerk

Lawrence A. Salibra, II, Esquire
Marc L. Goldman, Esquire
Sheridan K. Weissenborn, Esquire

JUN 23 1988

NO. 87-477

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1988

ALCAN ALUMINIO DO BRASIL, S.A.,

Petitioner,

vs.

LUCRECIA HERNANDEZ,

Respondent.

Now comes Marc L. Goldman, being first duly sworn according to law, states and deposes as follows:

1. That he has personal knowledge of the facts contained herein.

2. That he is the attorney for the Respondent, LUCRECIA HERNANDEZ, in the above-captioned case.

3. That this Affidavit is being provided to the United States Supreme Court, Clerk of Courts, pursuant to Supreme court Rule 28.2

4. That on or about September 30, 1988, the Brief in Opposition to the Petition for Writ of Certiorari, for the above-mentioned case, was shipped by United States Express Mail to the Clerk of Courts for the United States Supreme Court, at 1 First Street, Northeast, Washington, D.C. 20543.

5. That said Brief in Opposition to the Petition for Writ of Certiorari is being filed within the permitted time, which is thirty (30) days after the receipt of the Petition for Writ of Certiorari.

6. That said Brief in Opposition to the Petition for Writ

of Certiorari was mailed to: **Lawrence A. Salibra, II, Esq.**, 1301 East 9th Street, 29th Floor, Cleveland, Ohio, 44114.

Respectfully submitted,

STABINSKI & FUNT
Attorneys for Respondent
Third Floor
757 Northwest 27th Avenue
Miami, Florida 33125-3093
Telephone: (305) 643-3100

By: MARC B. GOLDMAN, ESQ.

SWORN TO AND SUBSCRIBED before me this 30th day of September, 1988

NOTARY PUBLIC, State of Florida

My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. NOV 25,1989
BONDED THRU GENERAL INS. UND.

(5464CERT)

NO. 88-557

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1988

ALCAN ALUMINIO DO BRASIL, S.A.,

Petitioner,

vs.

LUCRECIA HERNANDEZ,

Respondent.

MOTION FOR LEAVE TO APPEAR PRO HAC VICE
TO THE UNITED STATES SUPREME COURT

MARC L. GOLDMAN, ESQ.
STABINSKI & FUNT
Attorneys for Respondent
Third Floor
757 Northwest 27th Avenue
Miami, Florida 33125
(305) 643-3100

MOTION FOR LEAVE TO APPEAR PRO HAC VICE
TO THE UNITED STATES SUPREME COURT

I, Marc L. Goldman, ask the Court for leave to appear pro hac vice on behalf of my client, LUCRECIA HERNANDEZ. I meet all the requirements to practice in this Court except that I have not been a member of a state bar for three (3) years. On January 16, 1989, I will be a member of the Florida Bar for three (3) years. I meet all other requirements. I am a member in good standing of the Florida Bar. I am admitted to practice in the Eleventh Circuit Court of Appeals; I am also a member of the United States District Court Bar for the Southern District of Florida, as well as the United States District Court Trial Bar for the Southern District of Florida. No other member of my firm has been admitted to practice in the Supreme Court. Therefore, if I am not able to proceed with this matter in the Supreme Court, my client will be unduly prejudiced. It is my complete intention to apply for admission to this Court as soon as I am eligible, January 17, 1989.

Respectfully submitted,

STABINSKI & FUNT
Attorneys for Respondent
Third Floor
757 Northwest 27th Avenue
Miami, Florida 33125-3093
Telephone: (305) 643-3100

MARC L GOLDMAN

By: MARC L. GOLDMAN, ESQ.

(5464MOT.1)

NO. 88-257

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1988

ALCAN ALUMINIO DO BRASIL, S.A.,

Petitioner,

vs.

LUCRECIA HERNANDEZ,

Respondent.

Now comes Marc L. Goldman, being first duly sworn according to law, states and deposes as follows:

1. That he has personal knowledge of the facts contained herein.

2. That he is the attorney for the Respondent, LUCRECIA HERNANDEZ, in the above-captioned case.

3. That this Affidavit is being provided to the United States Supreme Court, Clerk of Courts, pursuant to Supreme court Rule 28.2

4. That on or about September 30, 1988, the Motion for Leave to Appear Pro Hac Vice to the United States Supreme Court, for the above-mentioned case, was shipped by United States Express Mail to the Clerk of Courts for the United States Supreme Court, at 1 First Street, Northeast, Washington, D.C. 20543.

5. That said Motion for Leave to Appear Pro Hac Vice to the United States Supreme Court is being filed, along with the appropriate substantive document, within the permitted time, which is thirty (30) days after the receipt of the Petition for Writ of Certiorari.

6. That said Motion for Leave to Appear Pro Hac Vice to the United States Supreme Court was mailed to: Lawrence A.

Salibra, II, Esq., 1301 East 9th Street, 29th Floor, Cleveland, Ohio, 44114.

Respectfully submitted,

STABINSKI & FUNT
Attorneys for Respondent
Third Floor
757 Northwest 27th Avenue
Miami, Florida 33125-3093
Telephone: (305) 643-3100

By: MARC L. GOLDMAN, ESQ.

SWORN TO AND SUBSCRIBED before me this 30th day of September, 1988

NOTARY PUBLIC, State of Florida

My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. NOV 25,1989
BONDED THRU GENERAL INS. UND.

(5464CERT.3)

NO. 88-887

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1988

ALCAN ALUMINIO DO BRASIL, S.A.,

Petitioner,

vs.

LUCRECIA HERNANDEZ,

Respondent.

MOTION FOR ATTORNEY'S FEES AND COSTS
TO THE SUPREME COURT OF THE STATE OF FLORIDA

MARC L. GOLDMAN, ESQ.
STABINSKI & FUNT
Attorneys for Respondent
Third Floor
757 Northwest 27th Avenue
Miami, Florida 33125
(305) 643-3100

MOTION FOR ATTORNEY'S FEES AND COSTS

Pursuant to Title 28 U.S.C. Section 1927, the Respondent in the above matter asks the Court for an award of excess costs, expenses, and attorney's fees incurred because of Petitioner's unreasonable and vexatious conduct as established by the following facts.

1. Petitioner has improperly attempted to invoke the Supreme Court's jurisdiction under Title 28 U.S.C. Section 1254.

2. Petitioner, with its vast resources, has actively sought to extend the already protracted litigation in this matter against a destitute Respondent and its counsel, a small firm.

3. Due to its frivolous conduct, Petitioner has wasted the time and money of Respondent and Respondent's counsel, as well as the time and expense of all the courts through which Petitioner has dragged this matter.

4. Petitioner's argument is devoid of merit.

5. Petitioner is or should be well aware that this Court is without jurisdiction to hear this matter.

Respectfully submitted,

STABINSKI & FUNT
Attorneys for Respondent
Third Floor
757 Northwest 27th Avenue
Miami, Florida 33125-3093
Telephone: (305) 643-3100

MARC L GOLDMAN

By: MARC L. GOLDMAN, ESQ.

(5464MOT.2)

NO. 88-[illegible]7

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1988

ALCAN ALUMINIO DO BRASIL, S.A.,

Petitioner,

vs.

LUCRECIA HERNANDEZ,

Respondent.

Now comes Marc L. Goldman, being first duly sworn according to law, states and deposes as follows:

1. That he has personal knowledge of the facts contained herein.

2. That he is the attorney for the Respondent, LUCRECIA HERNANDEZ, in the above-captioned case.

3. That this Affidavit is being provided to the United States Supreme Court, Clerk of Courts, pursuant to Supreme court Rule 28.2

4. That on or about September 30, 1988, the Motion for Costs and Attorney's Fees, for the above-mentioned case, was shipped by United States Express Mail to the Clerk of Courts for the United States Supreme Court, at 1 First Street, Northeast, Washington, D.C. 20543.

5. That said Motion for Costs and Attorney's Fees was

mailed to: **Lawrence A. Salibra, II, Esq.**, 1301 East 9th Street, 29th Floor, Cleveland, Ohio, 44114.

Respectfully submitted,

STABINSKI & FUNT
Attorneys for Respondent
Third Floor
757 Northwest 27th Avenue
Miami, Florida 33125-3093
Telephone: (305) 643-3100

BY: MARC L. GOLDMAN, ESQ.

SWORN TO AND SUBSCRIBED before me this 30th day of September, 1983.

NOTARY PUBLIC, State of Florida

My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. NOV 25,1989
BONDED THRU GENERAL INS. UND.

(5464CERT.2)